

# **FISCAL NOTE**

## **HB 2718 - SB 2784**

February 13, 2004

**SUMMARY OF BILL:** Provides the following significant changes in current tobacco tax law:

- Deletes definitions for manufacturing distributor, retail dealer, tobacco distributor and wholesale dealer and jobber. These are replaced with the similar terms cigarette distributor, cigarette importer, cigarette manufacturer, and cigarette retail dealer.
- The permissible supply chain for such newly defined industry categories is as follows: cigarette importers can only purchase cigarettes from licensed cigarette manufacturers, cigarette distributors can only purchase cigarettes from licensed cigarette distributors or retail dealers, cigarette distributors can only purchase cigarettes from cigarette manufacturers, importers or distributors and cigarette dealers can only purchase cigarettes from licensed cigarette distributors.
- Removes the power of resident agents to affix revenue stamps.
- Removes the word cigarette from the definition of tobacco product.
- Requires serial numbers on cigarette stamps.
- Requires additional information be provided to the Department of Revenue on monthly reports.
- Requires public access to monthly reports.
- Requires additional information to be provided to the Department of Revenue for licensing.
- Provides more stringent background requirements for licensing.
- Enacts license fees for each of the new supply chain categories.
- Requires the Department of Revenue to maintain a website that would provide information on cigarette licensees.
- Provides for the destruction rather than sale of contraband cigarettes.
- Requires consumers importing more than 20 packs of cigarettes into the state to report this importation to the Department of Revenue.
- Requires licensees holding both distributor and retail dealer licenses to keep stamped and unstamped cigarettes in separate areas.
- Increases the penalty for non-licensed handling of cigarettes from a Class B misdemeanor to a Class A misdemeanor.
- Increases the penalty for possession of non-stamped cigarettes from a Class B misdemeanor to a Class A misdemeanor.
- Provides a Class D felony for intentionally defrauding the state in failing to comply with the regulations provided in this legislation.
- Provides a Class E felony for anyone knowingly violating any provision of this legislation.

## **HB 2718 - SB 2784**

- Anyone possessing less than two cartons of counterfeit cigarettes (including false manufacturing labels, packaging, or counterfeit tax stamps) will be subject to the following penalties:
  - 1) First Offense - Provides a Class E felony punishable by a fine of \$1,000 or five times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed five years.
  - 2) Second Offense - Provides a Class D felony punishable by a fine of \$5,000 or five times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed five years, or both, in addition to the revocation of relevant cigarette licensing.
- Anyone possessing two cartons or more of counterfeit cigarettes (including false manufacturing labels, packaging, or counterfeit tax stamps) will be subject to the following penalties:
  - 1) First Offense - Provides a Class E felony punishable by a fine of \$2,000 or five times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed five years or both.
  - 2) Second Offense - Provides a Class D felony punishable by a fine of \$50,000 or five times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed five years, or both, in addition to the revocation of relevant cigarette licensing.
- Provides restrictions on the long distance sale of tobacco products as follows:
  - 1) Dealers would be responsible for ensuring the legal age of purchasers and submitting monthly sales reports to the Department of Revenue identifying purchasers and containing information regarding sales. Dealers would also be responsible for collecting any taxes applicable to the sale.
  - 2) Provides criminal penalties for individuals who violate the provisions of the legislation. The first violation would result in a penalty of five times the value of the cigarettes or \$1,000 whichever is greater. The second violation would result in a fine of five times the value of the cigarettes or \$5,000 whichever is greater. A knowing violation would be a Class D felony, punishable by a fine equal to five times the value of the cigarettes or \$10,000 whichever is greater and / or five years imprisonment. Any cigarettes involved in a violation of this legislation would be subject to seizure and destruction. Any property on the premises of a violator, whose intent was to defraud the state, would be forfeited.
  - 3) Requires delivery services to have an adult of legal minimum purchasing age to accept delivery for cigarettes. The acceptor, if such individual appears to be under 27 years of age, must provide a valid government identification bearing a photograph to accept such delivery.

### **ESTIMATED FISCAL IMPACT:**

**Increase State Revenues - Exceeds \$150,000**

**Increase State Expenditures - \$285,150 One-Time**

**\$358,400 Recurring**

**\$3,300/Incarceration Class D Felony**

**\$1,700/Incarceration Class E Felony**

**Increase Local Govt. Revenues - Not Significant**

**Increase Local Govt. Expenditures - Not Significant**

**HB 2718 - SB 2784**

Estimate assumes:

- The Department of Revenue will need six new positions to comply with the enforcement of this legislation. The total recurring cost of these positions is \$358,400.
- The Department of Revenue will have one-time costs of \$137,800 associated with the equipment necessary for these new positions.
- There will be one-time costs of \$147,350 for forms, systems changes, and web-page development associated with this legislation.
- The increase in state revenue estimated to total an amount exceeding \$150,000 comes from two sources:
  - 1) Fees imposed by the legislation.
  - 2) An increased ability to enforce tax payment regulations on long-distance tobacco sales.
- Additional revenue may be realized by the state through the seizure and forfeiture of property involved in intentionally fraudulent violations of this legislation.
- Any increase in costs to the court system could be absorbed using existing budgeted resources.
- Delivery services would continue to deliver tobacco products despite the regulations imposed upon them in this legislation.
- One Class D felony conviction every three years.
- One Class E felony conviction every three years.
- The impact of misdemeanor convictions depends upon the number of persons convicted of this offense and the resulting increased cost to local governments to confine such persons versus the increased revenues to local governments from fines levied and collected under the provisions of this bill.

*\*Section 9-4-210, TCA, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated for operating cost, in current dollars, shall be based upon the highest cost of the next 10 years, beginning with the year the additional sentence to be served impacts the correctional facilities population.*

## **CERTIFICATION:**

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

**HB 2718 - SB 2784**

